

REMARKS

Claims 1-20 are cancelled and Claims 21-35 are added. No new matter is added by the amendments to the claims.

In the Office Action dated April 29, 2005, the Examiner rejected Claims 1-20 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to Claims 1, 12, and 19, the Examiner stated that the phrase bag-like renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "bag-like"), thereby rendering the scope of the claim(s) unascertainable.

Applicant has rewritten the claims to eliminate "bag-like" and overcome this rejection.

The Examiner rejected Claims 1, 2, 4-6, 8, 9, 11, 12, 14-16, and 18-20 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,749,437 issued to Weller. The Examiner stated that as best seen in Figures 1 and 2, and recited in column 2, lines 29-54, column 4, lines 54-67, and column 6, lines 8-25, Weller discloses a 5 sided sewn cover device adapted to fit upon the upper end of a ladder, the cover device having openings at either end, those ends having elastic members 5 or 4a attached/sewn thereon, both permitting placement of the cover device on varying sizes of ladders and snug fits thereon, and the cover device also being made from a flexible cotton based material, i.e., canvas.

The Examiner rejected Claims 1-7, 11-17, and 19 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,498,579 issued to Brick. The Examiner stated that Brick discloses a reversible protective device 12 having a body formed of terry cloth material, and an elastic band 22 secured to an open end of the device to constrict the open end against an attached article 10.

The Weller patent shows a tool holder for use with a free-standing ladder being formed as a skirt with two trapezoidal side sheets 1 and 2, a rectangular rear sheet 3 and a rectangular front sheet 4. A handle 5 extends between the side sheets. The sheet 4 is shorter than the other three sheets and can have an elastic member 4a at a lower edge.

The Brick patent shows a golf bag cover 12 formed as a hood constructed of same size side pieces 34 and 36 sewn to opposite edges of a single piece consisting of a front end 14 and a

back end 28. The outer surface is a water repellant plastic material and the inner surface is a towel type material (terry cloth).

The Everson et al. patent shows a fitted bottom bed sheet 10 with a convenience pouch 12 that can be attached thereto by stitching or hot glue

Applicant has rewritten original Claims 1-11 as new Claims 21-31. Applicant's new independent Claim 21 defines the protective device as comprising a body formed of a flexible material and being substantially flat when not installed on a ladder, the body having a generally circular closed wall superposed on and connected to a generally annular wall, the annular wall forming a central opening. The device further comprises a closure means attached to the annular wall and extending at least partially about the opening, the closure means being operative to selectively reduce a size of the opening to releasably retain the body on the upper end portion of the ladder whereby when the body is installed on the upper end portion of the ladder, the body prevents the upper end portion of the ladder from marking or transferring paint to a surface upon which the upper end portion of the ladder rests.

In contrast to Applicant's Claim 21, the Weller tool holder:

1. Will not be substantially flat when not installed on a ladder due to the heavy duty fabric, the skirt shape and the handle 5.
2. Does not have a generally circular closed wall.
3. Does not have a generally annular wall forming a central opening.
4. Does not have a closure means extending at least partially about the opening. The elastic member 4a is on one side spaced from the opening at the bottom of the skirt.

In contrast to Applicant's Claim 21, the Brick golf bag cover:

1. Is not sized to cover an upper end portion of a ladder.
2. Will not be substantially flat when not installed due to the shape of the pieces, the grommet 30 and the reinforcement material area 32.
3. Does not have a generally circular closed wall.
4. Does not have a generally annular wall forming a central opening.

The Everson et al. patent does not provide any of the missing elements.

Applicant has rewritten original Claim 12 as new Claim 32. Applicant's new independent Claim 32 defines the protective device as comprising a body formed of a sheet of

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cloth material and being substantially flat when not installed on a ladder, the body having a generally circular closed wall superposed on a generally annular wall, the annular wall forming a central opening, the body being sized to cover an upper end portion of a ladder, and the body being reversible for turning inside out to present an inner surface of the body as an outer surface when installed on the upper end portion of the ladder. The device further comprises a closure means attached to the annular wall and extending about the opening, the closure means being operative to selectively reduce a size of the opening to releasably retain the body on the upper end portion of the ladder whereby when the body is installed on the upper end portion of the ladder, the body prevents the upper end portion of the ladder from marking or transferring paint to a surface upon which the upper end portion of the ladder rests.

Applicant's previous comments relative to the deficiencies of the cited patents also apply to Claim 32.

Applicant has rewritten original Claim 19 as new Claim 33. Applicant's new independent Claim 33 defines the protective device as comprising a body formed of a flexible material and being substantially flat when not installed, the body having a generally circular closed wall superposed on and connected to a generally annular wall, the annular wall forming a central opening. The device further comprises an elastic band extending at least partially about the opening, the elastic band being operative to selectively reduce a size of the opening to releasably retain the body on an end of an object, and a fastening means attaching the elastic band to the body at an edge of the annular wall surrounding the opening.

Applicant's previous comments relative to the deficiencies of the cited patents also apply to Claim 33.

The Examiner rejected Claim 10 under 35 U.S.C. 103(a) as being unpatentable over the Weller patent in view of Everson et al. The Examiner admitted that Weller fails to disclose the elastic band secured to the device by means of hot glue, but stated that Everson et al, as recited in column 3, lines 49-57, teaches the utility of fabric items (bed sheets) having sewn attachment elements (pouches) thereon, the attachment elements also securable to the fabric items by means of hot glue.

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Everson et al. does show fastening two fabric items together by hot glue. However, Everson et al. does not show or suggest fastening a closure means to a flexible material as defined by new Claim 30.

The Examiner stated that the prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The Examiner cited: U.S. Patent No. 5,647,453 issued to Cassells; U.S. Patent No. 6,435,304 issued to Stierle; and U.S. Patent No. 5,638,915 issued to Hardy as teaching ladder cover attachments. Applicant reviewed these references and found them to be no more pertinent than the prior art relied upon by the Examiner in his rejections.

In view of the amendments to the claims and the above arguments, Applicant believes that the claims of record now define patentable subject matter over the art of record. Accordingly, an early Notice of Allowance is respectfully requested.